

Sines, et al., v. Kessler, et al., 3:17CV72, 6/4/2021

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
CHARLOTTESVILLE DIVISION

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ELIZABETH SINES, ET AL., CIVIL CASE NO.: 3:17CV72  
JUNE 4, 2021, 2:02 P.M.  
STATUS CONFERENCE VIA ZOOM

Plaintiffs,

vs.

Before:  
HONORABLE NORMAN K. MOON  
UNITED STATES DISTRICT JUDGE  
WESTERN DISTRICT OF VIRGINIA

JASON KESSLER, ET AL.,

Defendants.

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1 (Proceedings commenced, 2:02 p.m.)

2 THE COURT: Go ahead and call the case.

3 THE CLERK: This is the case of Elizabeth Sines and  
4 others versus Jason Kessler and others, Case Number 3:17-cv-72.

5 THE COURT: Okay. Are those of you who are present  
6 ready?

7 MR. KOLENICH: Yes.

8 MS. KAPLAN: We are, Your Honor.

9 THE COURT: Before we begin, I will remind everyone  
10 that under Standing Order 2020-12, the Court's prohibition  
11 against recording and broadcasting court proceedings remains in  
12 force. Attorneys, staff, and any members of the public  
13 accessing this hearing today may not record or broadcast it.

14 I have convened this conference today to discuss a  
15 matter which the Court has been assessing; and that is the  
16 feasibility of conducting the jury trial in this case in the  
17 federal courthouse in Charlottesville from October 25th to  
18 November 19, 2021, as presently scheduled. That's, of course,  
19 you know, about five months away. It's, you know, time to  
20 be -- at least to be planning seriously what we're going to do.  
21 I plan to raise for the parties' consideration, and we'll begin  
22 to solicit input on four topics that I think will be relevant  
23 to that assessment for the trial. I'll list them now, and then  
24 we can get preliminary comments the parties might have.

25 First, the number of parties and lawyers in this case

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1 raises a significant logistical concern of how to make sure  
2 each side is represented at trial, given space limitations in  
3 even a large courtroom such as that in Charlottesville. Space  
4 limitations would be of concern regardless, but I expect we  
5 could continue to see risk from COVID-19 in October. What is  
6 an optimal and manageable footprint for each side in the  
7 courtroom at trial? How many plaintiffs and plaintiffs'  
8 counsel could you do with in the courtroom at trial? And a  
9 similar question for the defendants, though I know there are  
10 separate lawyers for groups of defendants, and also I think  
11 four pro se defendants.

12 Second, this trial will, by necessity, involve not  
13 just the courtroom itself. The footprint of the parties in the  
14 trial in the courthouse is also a factor. During breaks in  
15 trial, there could be the need for a breakout room or rooms.  
16 There won't be enough for each individual party to have his own  
17 space, but could all the defendants predominantly use one  
18 shared space for a breakout room, given the number of parties  
19 and counsel in the courtroom itself? I expect there may be  
20 some, but limited, space for the public or press in the  
21 courtroom. And so I have given some thought to having video  
22 feed linked to another room in the courthouse just for any  
23 overflow public or press.

24 Those two points are relevant to a third issue that I  
25 have been considering; that is, whether the federal courthouse

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1 in Charlottesville is best equipped to handle the trial, or any  
2 trial of this scope and magnitude. The jury room is quite  
3 small. The hallways are narrow. Getting jurors and everyone  
4 up and down the stairs and the elevators to the courtroom will  
5 take a good deal of time that we will need to build into the  
6 trial schedule. And there are some, but limited, other rooms  
7 for use by the litigants and public. Security considerations  
8 also must factor into this. Frankly, the courthouse in  
9 Charlottesville is woefully inadequate with regard to any kind  
10 of normal security and just ordinary needs for moving jurors  
11 and parties around.

12 I welcome the parties' thoughts today, and it would  
13 be helpful -- and if it would be helpful in written summations  
14 whether the courthouse in Lynchburg, or even possibly Roanoke,  
15 might offer the parties a more suitable venue for the trial.  
16 For instance, the courthouse in Lynchburg would likely have  
17 substantially more space for the parties and jurors' use,  
18 including three courtrooms and numerous conference rooms and  
19 areas for public and press viewing. And it would well be that  
20 the entirety of the courthouse could be utilized for the trial.

21 Fourth, and finally, as this case goes to trial, it  
22 is in the interest of all parties and the Court to ensure that  
23 the actual issues in dispute are narrowed as much as possible.  
24 This is currently set for -- the trial is currently set for  
25 four weeks. I would ask the parties whether the expectation

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1 remains that it will take that long. To that end, in several  
2 cases, my pretrial order generally asks the parties to seek  
3 agreement on stipulated facts on issues where there can be no  
4 reasonable disagreement.

5 Also encourage mediation before the magistrate judge.  
6 I guess you might think that's overly optimistic about settling  
7 this case. I think this is an unusual case, but there are  
8 other things that can be mediated other than settlement. And  
9 the magistrate could possibly help that out -- help out with  
10 that. And it's also for the purposes of narrowing specific  
11 issues and disputes at trial. I would like to hear from  
12 counsel whether a referral order to mediation before the  
13 magistrate judge could assist the parties in preparing the  
14 trial.

15 There are a number of other matters, but they're the  
16 four main issues. Of course, also I think it would be very  
17 difficult to select a jury in Charlottesville.

18 I know I've given the parties a lot to consider. Why  
19 don't we just begin with plaintiffs' counsel addressing the  
20 issues I've brought up, and whether there are points that would  
21 benefit from a meet and confer between the parties following  
22 this conference, or followed by written summations.

23 MS. KAPLAN: Sure, Your Honor. Would you like me to  
24 speak? This is Roberta Kaplan.

25 THE COURT: Yes.

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1 MS. KAPLAN: So Your Honor, we thought -- I thought  
2 that you might raise some of the issues that you raised today,  
3 and we've been thinking long and hard about how to practically  
4 do this given COVID and given the large number of people  
5 involved. So we had a couple of thoughts for Your Honor's  
6 consideration and obviously for the defense consideration.  
7 First of all, and most importantly, we are able and we are  
8 willing to limit the number of plaintiffs in the courtroom at  
9 one time to one or two max. We have our plaintiffs' consent  
10 for that limitation, and that limitation should obviously be a  
11 big help in terms of limiting the number of people who will be  
12 in the courtroom at any one time. We can make similar  
13 limitations with respect to the lawyers. Obviously, we're not  
14 going to have huge teams of lawyers from each firm. We'd have  
15 very small teams of one or two from the three firms involved.  
16 So we thought about that, and we would hope that that would at  
17 least go partway to solving the problem.

18 The other thing that we thought about, Your Honor --  
19 which you have already raised, and I think makes a lot of  
20 sense -- is a video link that could be used both so that the  
21 plaintiffs who are not in the courtroom could watch in  
22 realtime, and to maybe deal with some of the issues about press  
23 and public knowledge about what's going on. In that regard,  
24 Your Honor, I have an old friend who does this work who has  
25 been working for a long time, and he has graciously honored --

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1 agreed to do it for free, to wire the courtroom and the  
2 courthouse so that the trial could be broadcast in realtime via  
3 Zoom.gov, which is the platform we're using today, which has  
4 been established to be the security requirements by the federal  
5 government. We could do that either to breakout rooms in the  
6 courthouse, or we could do it, Your Honor -- if Your Honor  
7 wants to think about that -- we have rented the very large  
8 conference room at the hotel, the Omni, across the street. And  
9 we could also broadcast it as kind of an overflow room in there  
10 as well.

11 In short, Your Honor, there's lots of different ways  
12 we could do this, and we have thought about that very hard.  
13 The company that we'd be using -- it's called Impact  
14 Reporting -- is very experienced and adept at it.

15 (Audio interruption.)

16 THE COURT: I'm sorry?

17 THE CLERK: I had to mute someone. Go ahead.

18 MS. KAPLAN: I'm sorry. So just to summarize, Your  
19 Honor, we could limit -- we think there would be nine people,  
20 somewhere like that, on the plaintiffs' side. Based on our  
21 current sense of things, probably around the same number on the  
22 defendants' side. If we left the courtroom -- so anything for  
23 the press was broadcast somewhere else, either to another room  
24 in the courthouse or to YouTube, which is possible as well, or  
25 to the conference room at the hotel across the street, we think



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1 we could satisfy the public safety requirements of COVID,  
2 because we could have people sitting in the rows of the  
3 audience section on each side. And it may also help out with  
4 any breakout room concerns. We wouldn't need a breakout room,  
5 Your Honor, at least for lunch, because again, we'll have a  
6 room at the hotel room across the street to try to save space  
7 for Your Honor.

8 I think this is all a long way of saying that we  
9 would -- our clients would greatly, greatly prefer to try this  
10 case in Charlottesville. That's where it happened. That's  
11 where many of them are from. Among other things, Your Honor,  
12 just practically speaking, the not-for-profit that has been  
13 funding the out-of-pocket expenses on this case has already put  
14 a very large deposit down on hotel room space in  
15 Charlottesville. And I'm told that they stand to lose  
16 somewhere in the range of \$100,000 if the trial gets moved.

17 So for all those reasons, we would prefer to do it in  
18 Charlottesville. We know it's not simple. We would agree to  
19 very strict limitations on who could be in the courtroom at any  
20 one time, and we would use the gracious and very generous  
21 services of Impact Reporting to help us broadcast the trial in  
22 realtime wherever and whenever the Court chooses. We could  
23 meet and confer with the defendants about that, and we could  
24 also meet and confer with court personnel about that.

25 THE COURT: Okay. Obviously raises a lot of issues

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1 about private persons broadcasting from the courthouse. I  
2 mean, it may be worth considering. I was thinking more in  
3 terms of trying to find someplace within the courthouse to  
4 broadcast to. Of course, we have got IT people who can handle  
5 anything like that, but I'm not sure they would go off -- you  
6 know, I'm not sure they could legally do anything off the  
7 courthouse property. But anyway, I'll just keep that in mind.  
8 I'm not sure the feasibility of that.

9 All right. Let's see. Did you wish to speak to any  
10 of the other issues I raised?

11 MS. KAPLAN: On the other issues -- and my colleague,  
12 Karen Dunn, is on the phone, and she should definitely speak up  
13 about anything I missed.

14 On the other issues, we obviously agree that issues  
15 should be narrowed to the maximum extent before trial. We've  
16 been working on a pretrial order that we intend to submit to  
17 Your Honor for -- with the various dates which things would be  
18 due, but we think we should be able to make substantial  
19 progress on that before trial. We're, of course, Your Honor,  
20 happy to talk with a mediator, but -- with a magistrate as a  
21 mediator, but I have to say that there have been sporadic  
22 conversations with at least some of the individual defendants  
23 separately, and none of that has panned out. So I'm not very  
24 optimistic about the chances of any real settlements here.

25 THE COURT: Okay. Well, I still might send an order

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1 to Judge Hoppe, and he would be available if at least one of  
2 the parties on the other side would want to mediate some  
3 particular issue.

4 Anything else you would like to add?

5 MS. KAPLAN: I don't think so, Your Honor, unless  
6 Karen -- I think I heard Karen start to speak. So go ahead,  
7 Karen.

8 MS. DUNN: Sure. Good afternoon, Your Honor. Karen  
9 Dunn for the plaintiffs.

10 The only thing that I have to add is I -- and also  
11 Ms. Phillips, who is also plaintiffs' counsel -- just got out  
12 of a trial in federal court that did have public access, press  
13 access, and restricted limits on the number of lawyers and  
14 other folks in the courtroom. It was a bench trial, not a jury  
15 trial; but frankly, there were people in the courtroom that  
16 could have, you know -- numbers-wise could have amounted to a  
17 jury. It was extremely successful with regard to the COVID  
18 protocols, including masks and face shields for witnesses and  
19 examining lawyers, including media access which was provided  
20 for the reporters and also streaming access outside the  
21 courthouse. And that was all accomplished, my understanding,  
22 is by the Court itself and by the staff there. So if at any  
23 point it's helpful to you, or to your court clerk, or to  
24 anybody else for us to tell you about our experience and all  
25 the protocols that were put in place, we would be happy to do

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1 that. But it was -- it was absolutely seamless. And  
2 everybody, you know, cooperated with these protocols.

3 THE COURT: Well, we're having success here in the  
4 Western District with the trials we've had, but they didn't  
5 present the problems that this one presents. And I'm hoping by  
6 October that we will not have to worry about distancing,  
7 because if we do, I don't know how we're going to get along  
8 with this.

9 All right. Thank you. Let's see. Mr. Kolenich?

10 MR. KOLENICH: Yes, Your Honor.

11 THE COURT: Do you have any comment?

12 MR. KOLENICH: We did confer, most of the defense  
13 attorneys. We don't object to moving the trial outside of  
14 Charlottesville; however, we didn't specifically discuss what  
15 courthouse it might go to. And I, of course, am the worst  
16 possible choice to opine on the different courthouses around  
17 Virginia. I've only ever been in the one. So I think that  
18 will have to wait for written submission. I understand the  
19 plaintiffs want to keep it in Charlottesville, and that there  
20 are significant financial considerations at this point. So  
21 we'll talk about all that with the plaintiffs.

22 The space limitations I think are going to be all  
23 right with at least the represented defendants. Obviously the  
24 attorneys have to be in the room, and we do not have anywhere  
25 near the large number of attorneys that the plaintiffs do. But

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1 we are able to limit the number of parties, or at least only  
2 call them in on the days when their testimony is necessary. We  
3 also wouldn't object to the parties testifying from -- over  
4 electronic means, such as Zoom. I know that's happening in  
5 various hearings and courthouses around the country. So if  
6 it's acceptable to everybody, we wouldn't object to that.

7           The Charlottesville courthouse is not ideally located  
8 for ingress and egress if there's going to be crowds. So we  
9 did have some discussion about securely getting people in and  
10 out of the courthouse, not just the logistics of it, but from a  
11 safety perspective. But we are all okay with waiting to see  
12 what develops, as opposed to having a plan in place ahead of  
13 time. So we'd probably like to discuss that with the  
14 plaintiffs as well about perhaps some side access for attorneys  
15 or high-value parties, infamous parties that might be coming in  
16 and out of the courthouse is something we discussed, but we  
17 don't have any particulars to offer the Court today.

18           THE COURT: Okay. Let's see. Mr. Campbell?

19           MR. CAMPBELL: Yes, good afternoon. Thank you, Your  
20 Honor. Dave Campbell for Defendant Fields.

21           I share the Court's concern with the use of a private  
22 company with no compensation handling the video access. And I  
23 did speak with Mr. Kolenich as well in regard to the defense  
24 kind of positioning everything. So I won't rehash it.

25           Out of that, one of our thoughts was if the courtroom

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1 was -- if essentially all or the vast majority of the courtroom  
2 was limited just to counsel and the parties, that would  
3 probably help us spread out -- as it sounded like the Court was  
4 kind of indicating -- in the gallery, and then just come up  
5 kind of whenever it's your turn to speak and whatnot.

6 I will unfortunately have to be asking the Court for  
7 leave to bring my client. I'm aware that he doesn't have a  
8 constitutional right and that the Court may not grant that, but  
9 just to make the Court aware that we'll be making a motion  
10 along those lines.

11 But yeah, I think limiting the number of parties is a  
12 good idea. And other than that, I think everyone covered it.  
13 Thank you, Your Honor.

14 THE COURT: Where is your client located now?

15 MR. CAMPBELL: He is in a correctional facility in  
16 Pennsylvania.

17 THE COURT: Okay. All right. Mr. Jones, is he  
18 present? Is anyone here representing Michael Hill, Michael  
19 Tubbs, or the League of the South?

20 Okay. Mr. ReBrook representing Kevin Schoep, the  
21 National Socialist Movement, Nationalist Front, anyone  
22 representing those defendants?

23 All right. Mr. Spencer, did you have any comment?

24 MR. SPENCER: Yes. Good afternoon.

25 Not only do I not object to moving the trial to

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1 Lynchburg, I think your instincts are sound on this; and I  
2 would support that move for matters of feasibility, but also  
3 matters of public spectacle and the media. I, too, am  
4 concerned when I hear about spending \$100,000 on hotel rooms  
5 and having a third-party broadcast service that is titled  
6 "Impact Broadcasting." I don't think that serves justice.  
7 That seems to be promoting a public spectacle, which is what we  
8 would like to avoid.

9 I would also just like to suggest some -- or mention  
10 some security concerns, which I think were already mentioned by  
11 some of the defendants' counsel. I have been in the past -- a  
12 few years ago -- attacked by activists, and so on. That is a  
13 concern to me. So I think we should be -- and I think these  
14 are your instincts on this and your instincts are sound -- I  
15 think we should be trying to lower the temperature and removing  
16 any kind of public spectacle aspect to this and just stick to  
17 the facts. But also, even with that, I think there are some  
18 serious security concerns. I'm, of course, speaking for  
19 myself. That might also be applicable to other defendants, but  
20 I definitely have some security concerns in terms of moving in  
21 and out of the courtroom.

22 Also, just as a quick addition, I'm more than happy  
23 to engage in some kind of mediation with the magistrate judge.  
24 That's it.

25 THE COURT: All right. Thank you.

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1 THE CLERK: Judge Moon, Bryan Jones, he has been  
2 trying to join, and he must be having connection issues. He's  
3 joined twice and been kicked off.

4 THE COURT: Okay.

5 THE CLERK: He's currently not on, but he has been  
6 trying.

7 THE COURT: All right. Is Dylan Harper signed on?

8 THE CLERK: No, I don't see his name.

9 THE COURT: How about Matthew Heimbach?

10 MR. HEIMBACH: Yes, Your Honor, I'm here.

11 THE COURT: Would you like to speak?

12 MR. HEIMBACH: I would, Your Honor.

13 I would just like to echo the sentiment held by  
14 Mr. Spencer and defense counsel. I think that there is a true  
15 danger to not just our physical health, but possibly our lives,  
16 in Charlottesville. Logistical concerns are also big,  
17 considering the fact that we're seeing additional lockdowns  
18 being reestablished in places like China with the new Indian  
19 variant of COVID. We might not be out of the woods yet when it  
20 comes to this issue, and it could get worse. It looks like it  
21 is at least in some places. So having more space.

22 Then also the security concerns would be important in  
23 terms of also moving -- one of the issues is just even housing,  
24 because Airbnb and other rental services for homes have --  
25 folks like myself can't utilize them anymore. So especially in



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1 a place like Charlottesville, I think it would be an undue  
2 hardship and incredibly expensive, which as a working class  
3 father of two that has -- I'm the breadwinner for my wife. I  
4 have child support for my kids. I live paycheck to paycheck.  
5 Being out of work for a month and being in a very expensive  
6 place like Charlottesville where I might not even be able to  
7 find a place to rent would be an undue hardship for me to be  
8 able to properly defend myself, and I think that would apply to  
9 a lot of my fellow defendants.

10 So I would support moving. I also support being  
11 willing to meet, as Mr. Spencer said he was willing, to talk  
12 with plaintiffs to try and mediate this.

13 And also I was curious in terms of the Court's  
14 thoughts -- I don't know if this is the proper venue -- but in  
15 terms of time spent for the trial, as best I can read the  
16 plaintiffs' complaint, there are no allegations I had any  
17 connection with James Fields, and I was not at the torch march  
18 the night before the rally. So a full two-thirds of what I  
19 think we could say is the pretty distinct parts of the  
20 plaintiffs' accusations, I'm not even included in tangentially.

21 THE COURT: Okay. Well, I don't want to get into --

22 MR. HEIMBACH: Sure.

23 THE COURT: -- that argument now, but I am curious  
24 about one of the things I did want you to comment on, is the  
25 length of the trial.

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1 MR. HEIMBACH: Yes, Your Honor. I mean, for me, I'm  
2 almost certainly going to lose my job. I live in an at-will  
3 work state. So I don't have enough vacation time to take a  
4 full month off. So for me, I'd like it to be as short as  
5 possible, or if there would be some way for parts of the trial  
6 for me to join remotely for things that perhaps don't directly  
7 involve me, because it's not just going to be a hardship for  
8 myself, but for my wife, for my ex-wife, and for my two  
9 children that rely on me -- all of them -- you know, to be able  
10 to work. I'll almost certainly lose my job, not being there  
11 for a month.

12 THE COURT: Well, we can certainly look into some  
13 sort of Zoom presence. And maybe, if necessary, you might come  
14 for a day or two. But I don't think that -- I think that's  
15 something that could be worked out.

16 MR. HEIMBACH: Thank you, Your Honor.

17 THE COURT: I think -- actually, I think Mr. Kolenich  
18 said that he might have other defendants appear by Zoom, I  
19 believe.

20 Okay. Is there any party that's represented now that  
21 hasn't spoken, or a representative of any party that hasn't  
22 spoken?

23 Ms. Kaplan, what is your idea of the length of the  
24 trial now?

25 MS. KAPLAN: So Your Honor, let me start with that.

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1 We think that given some of the adverse inference rulings that  
2 the Court has made, that there is a significant possibility  
3 that the trial won't take as long as we originally expected.  
4 This obviously depends on both sides. And we don't have a good  
5 sense of how many witnesses the defendants intend to put on,  
6 but we are hopeful that it could be reduced to closer to two  
7 weeks, is our current hope.

8 THE COURT: Is that your evidence, or the whole trial  
9 are you estimating maybe two weeks?

10 MS. KAPLAN: The hope is the whole trial, Your Honor.  
11 But again, you know, the parties will work very hard about  
12 stipulations to stipulate to facts and make the evidence  
13 presentation as efficient as possible. And again, we have a  
14 pretrial order that will force the parties to do that, but we  
15 would anyway start meeting and conferring with counsel for the  
16 defendants and the defendants about that. But again, I think  
17 the adverse inference rulings could really help to expedite  
18 things in terms of the length of the trial.

19 In terms of Mr. Heimbach's concern about not having  
20 to be there the whole time, that's exactly what we -- why we  
21 suggested Impact. They have no connection to any party, other  
22 than they recently did -- I think it was the first ever hybrid  
23 COVID trial before Judge Schofield in the SDNY where they had  
24 witnesses testifying from India, counsel from Italy and France,  
25 and over 60 remote participants. And they were able to do that

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1 in a socially-distanced courtroom. So that's why we  
2 recommended them. But, of course, if the Court is not  
3 interested, you know, that's -- that was just to try to be  
4 helpful.

5 THE COURT: Well, thank you. It's not that I'm not  
6 interested, but it just takes some investigation. It's not  
7 something we can just say it's okay, because there are rules of  
8 court about broadcasting, and also getting private persons  
9 involved in any phase of the proceedings.

10 MS. KAPLAN: Of course.

11 THE COURT: And I know they're not participating in  
12 the trial, but still it's --

13 MS. KAPLAN: We're happy to get the Court and the  
14 defense more information. We're also obviously happy to put  
15 you in touch with Judge Schofield herself up in New York, who  
16 may be able to shed some light on this.

17 THE COURT: What court was Judge Schofield in?

18 MS. KAPLAN: Southern District of New York, Your  
19 Honor.

20 THE COURT: Okay.

21 MS. KAPLAN: In terms of venue, it sounds like we're  
22 going to need to brief this. I'm not sure the parties are  
23 going to agree. But let me just say one thing for the record,  
24 Your Honor: It will be almost four years ago to the day when  
25 this trial resumes when the events at issue in this case

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1 happened in Charlottesville. When the defendants came to  
2 Charlottesville after weeks of organization and planning in  
3 August 2017, they weren't worried about security. They weren't  
4 worried --

5 THE COURT: Well, wait, wait, wait. Now, don't start  
6 that, because we're starting this case out even, as far as the  
7 Court is concerned. I'm not going to let one side, you know --

8 MS. KAPLAN: No, but --

9 THE COURT: -- say we're the white hats and they're  
10 the black hats.

11 MS. KAPLAN: No, but my point is they could do this  
12 in Charlottesville, terrorize the town that way, and now say  
13 that they're worried about the expense and security when they  
14 did this to Charlottesville themselves back in August 2017  
15 sounds --

16 THE COURT: Okay. I'm not --

17 (Unreportable crosstalk.)

18 Ms. Kaplan, excuse me. Do you think -- do you want  
19 to go down to the Fourth Circuit and defend a ruling that I  
20 make that incorporates what you just said? Do you think the  
21 Fourth Circuit is going to allow me to make a decision -- an  
22 important decision in this case because I think one party is  
23 more innocent than the other?

24 MS. KAPLAN: No, Your Honor, I'm not saying that.

25 THE COURT: But I don't --

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1 MS. KAPLAN: I'm not saying they're more innocent or  
2 not.

3 THE COURT: I think you're being provocative. And I  
4 didn't call this meeting to get into an argument, and I don't  
5 want the defendants to feel they've got to answer this.

6 MS. KAPLAN: No, no. I understand, Your Honor. Let  
7 me try to be as neutral as possible. I'm saying we're willing  
8 to wire the courtroom. We're willing to deal with security  
9 concerns. Those were issues that have always existed. They  
10 existed four years ago. It just sounds a little ironic for the  
11 defendants to be complaining --

12 THE COURT: Well, I'm not thinking only of -- it's  
13 not only the defendants. I mean, we will have all the  
14 participants in the event -- a lot of the participants in the  
15 event that brought about this trial congregated back at the  
16 scene where it all took place. And there will be people that  
17 we have no control over possibly attending, and we don't know  
18 exactly what to expect. And if we get away from that area,  
19 that could reduce that tension.

20 MS. KAPLAN: The concern I think that we have, Your  
21 Honor, among other things -- and again, we're happy to brief  
22 this, but I think the concern we have is that the security  
23 concerns would be just as high, if not higher. It's not like  
24 people aren't going to know where this trial is taking place.  
25 We have social media and the Internet today. It will be known

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1 to adherents of both sides where this trial is taking place.  
2 So we have spent a lot of time working out security in  
3 Charlottesville. We believe it will be secure. But if we have  
4 to switch venues now and try to plan that in a different town,  
5 it raises concerns for plaintiffs, as well, about security,  
6 which are not insubstantial.

7 MR. HEIMBACH: Your Honor -- I'm sorry, Richard, do  
8 you want to go?

9 MR. SPENCER: No, you can go ahead.

10 MR. HEIMBACH: Okay. Your Honor, I would just like  
11 to bring up the plaintiffs discussing security concerns. I  
12 have not had them reach out to me about security for myself, so  
13 I would assume that is a one-sided security plan. Based upon  
14 the bias of the plaintiffs, it seems very passionate and like  
15 they're trying to set up by having this in Charlottesville to  
16 be a hanging court, that they are going in from day one to try  
17 and specifically not prove their allegations, but to try and  
18 create a spectacle through affiliated media companies, to be  
19 able to put us potentially in danger, and to try and drag us in  
20 some sort of ritualistic manner back to Charlottesville.

21 When Ms. Kaplan said that we came to Charlottesville,  
22 I worked with the Charlottesville Police Department on a plan  
23 to follow the law, which I did, which of course we'll discuss  
24 at trial. I'm not going to litigate here. But I worked with  
25 the authorities the entire way --

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1 THE COURT: All right. I understand. That's what I  
2 was trying -- Ms. Kaplan, that's why I wanted you to stop. I  
3 don't want to get into this type of conversation about the  
4 case. The security of everyone is -- the Court has to consider  
5 everyone's security in this case.

6 MS. KAPLAN: We understand, Your Honor.

7 THE COURT: Plus the public's.

8 MS. KAPLAN: We understand, Your Honor. Our concern  
9 is honestly that the security concerns -- and we can brief  
10 this, Your Honor -- would arguably be even worse for us and for  
11 the plaintiffs if we were moved to Lynchburg or Roanoke.  
12 That's our concern, and we've spent a lot of time thinking  
13 about this. So we're happy to brief it. We're happy to  
14 discuss it with Your Honor. This is not something we take  
15 lightly. Months of planning have gone into this, including the  
16 hotel arrangements to make sure that things would be secure.  
17 And that would all have to start all over again in Lynchburg.  
18 And again, I think the idea that people on both sides in the  
19 public aren't going to gravitate to this, knowing where it is,  
20 it's going to be just the same in Lynchburg or Roanoke as it is  
21 in Charlottesville.

22 MR. SPENCER: Your Honor, I agree with your  
23 instincts. I mean, clearly the temperature is going to be  
24 lowered in Lynchburg than it would be in Charlottesville. I  
25 mean, of course we live in a social media age, but that just



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1 seems to be a fact.

2 Ms. Kaplan is throwing out really outrageous  
3 accusations. She actually referred to the defendants as  
4 terrorists. And then she's also claiming that she wants to --  
5 you literally did that verbatim -- and she's also claiming that  
6 she wants to be neutral and that this is a security concern.  
7 The only concern --

8 THE COURT: Well, I don't want to make this about  
9 anyone -- any person.

10 MR. SPENCER: Okay.

11 THE COURT: Let's stick to what's a good plan for the  
12 trial.

13 MR. SPENCER: Fair enough.

14 MS. DUNN: Your Honor, may I just say two things --

15 THE COURT: Yes.

16 MS. DUNN: -- in the service of pragmatics. One  
17 thing I think that we need to put on the agenda to be  
18 considered is that we have, you know, for prior hearings at the  
19 courthouse interfaced with the marshals in Charlottesville.  
20 And, you know, part of what we have done in order to get  
21 prepared for this, and what we've been doing is specifically to  
22 address the issues that the Court is now addressing with the  
23 marshals there. And obviously, you know, as Ms. Kaplan said, I  
24 do think we need to take into account the work and planning  
25 that has been done with regard to security already with the

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1 specific people already. So I think, you know, as Your Honor  
2 said, when we brief this -- I think, you know, we'd be happy to  
3 brief it. But one of the things that I think we'd like to take  
4 into account is all the work that has already been done, but  
5 including working with the folks on the ground at the  
6 Charlottesville courthouse, because we've had to do that for  
7 prior hearings.

8 And then the second thing I would just offer the  
9 judge -- you know, I do think there is this judge in New York  
10 who has done something similar. The trial that I just did in  
11 the Northern District of California was extraordinarily high  
12 profile, so the press and the public concerns were very real.  
13 It was probably one of the most-watched trials. Obviously, you  
14 know, there have been other very high-profile trials this year  
15 conducted in the place where the conduct took place, which as  
16 Your Honor knows, has its own value of having a trial where the  
17 conduct took place.

18 So I raise all of this to say that this is an  
19 extremely multifaceted issue. And there is a lot that we would  
20 need to brief and talk about with Your Honor in order to give  
21 it its full hearing.

22 THE COURT: All right. Anyone else have any comment?

23 MR. CAMPBELL: Judge, this is Dave Campbell. My only  
24 comment is limited to the length of the trial. As the Court  
25 indicated, I don't see this ever getting done in two weeks. I

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1 can't recall the exact length of time, but I think it took an  
2 awfully long time to pick a jury in my client's criminal trial,  
3 and I anticipate it's going to be similar. I'm not entirely  
4 aware of the Court's constraints on written voir dire and all  
5 that sort of thing, but I would imagine it's going to take more  
6 than one day to pick a jury in this case, I'm sure, with this  
7 many parties. So I think two weeks -- I'm hopeful. That would  
8 be great. I'm not saying that in any manner that I hope the  
9 trial goes longer. It just seems that merely given the number  
10 of plaintiffs and the number of defendants, two weeks seems  
11 overly optimistic to me in order to seat a jury and try this  
12 case. I would think three would be great. I mean, I think  
13 that would be efficient, stipulating everything we could, and  
14 moving on through this quickly without duplicating evidence.  
15 That would -- in my humble opinion, that would seem to be as  
16 short as we could make it.

17 MS. KAPLAN: Your Honor, our goal would be two, but I  
18 agree with Mr. Campbell; it's entirely conceivable it takes up  
19 to three.

20 THE COURT: All right. Well, that's one of the  
21 concerns I have is picking the jury. And the length of time,  
22 of course, is one consideration, but just -- well, that's just  
23 something that has to be dealt with.

24 Is there anything else that we need to talk about at  
25 this time?

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1           If anyone has any contact with Mr. Jones -- well,  
2 Carmen, you can have Mr. Jones -- he can file submissions, but  
3 we'll allow any of you to file any submissions within -- do it  
4 within seven days, by next Friday.

5           MS. KAPLAN: Will do, Your Honor.

6           THE COURT: And then include Mr. Jones and any other  
7 person that's not present today.

8           MR. CAMPBELL: Your Honor, just to be clear, is that  
9 in general we're limited to the four topics, kind of what we've  
10 been discussing here today?

11          THE COURT: Well, don't -- don't get into the merits  
12 of the case at this point, okay?

13          MS. KAPLAN: We understand, Your Honor.

14          THE COURT: All right. Thank you all for joining  
15 this afternoon. We'll try to work something out equitably to  
16 everyone. Thank you.

17 (Proceedings concluded, 2:42 p.m.)

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C E R T I F I C A T E

I, Lisa M. Blair, RMR/CRR, Official Court Reporter for the United States District Court for the Western District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Lisa M. Blair

Date: June 7, 2021